

Northern Virginia Long-Term Care UPDATE

Information and Issues from the Northern Virginia Long-Term Care Ombudsman Program

Discharge Letters: What Should Be Included?

The possibility of transfer or discharge from a nursing facility can be both frightening and stressful for residents and their families. Recently, the Northern Virginia Long-Term Care Ombudsman Program has received copies of several letters of discharge from different nursing facilities. While the letters have varied in content, our office would like to clarify information regarding the discharge process and what should be included in discharge letters.

- 1) **The law has very definite regulations regarding involuntary transfers and discharges.** According to the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) for Medicare and Medicaid participating nursing facilities (42CFR483.12), nursing facilities are prohibited from transferring or discharging a resident unless it can establish that one of the permissible reasons for transfer/discharge exist. Those reasons are:
 - The nursing facility cannot provide adequate care for the resident;
 - The resident's health has improved to the point that he or she no longer needs nursing facility care;
 - The safety of individuals in the facility is endangered;
 - The health of others in the facility would otherwise be endangered;
 - The resident has failed, after reasonable and appropriate notice, to pay for care (although the facility cannot evict a resident who is waiting for Medicaid eligibility and should work with other state agencies to obtain payment if the resident's money is being held by a family member or other individual); or
 - The facility ceases to operate.
- 2) Before proposing a transfer or discharge, a nursing facility must identify and try to meet the resident's individual medical, nursing, and psychosocial needs. This may involve evaluating the resident's current care plan and developing and implementing a revised plan of care designed to meet those needs. Many of the permissible reasons for transfer or discharge can be addressed through this type of assessment and care planning.

3) If the facility has tried to meet the resident's needs and feels a transfer or discharge is appropriate, it must record the reason for transfer/discharge in the resident's clinical record, and notify the resident and the resident's family member, guardian, or legal representative in writing. **The statement must include:**

- The reason for the transfer or discharge;
- The location the resident will be moved;
- The date of transfer or discharge;
- Information about the resident's right to appeal to the appropriate state office concerning the transfer or discharge, and;
- The name, address, and phone number of the State Long-Term Care Ombudsman (For the Northern Virginia area which includes the city of Alexandria and the counties of Arlington, Fairfax, Loudoun and Prince William, the local ombudsman program will suffice).
- In cases where the resident is developmentally disabled or mentally ill, the notice must include the name, address, and phone number of the agency responsible for advocating for them.

A resident and/or the resident's family member, guardian, or legal representative has the right to appeal the nursing facility's decision to transfer or discharge him or her through a process known as an administrative law hearing. The transfer or discharge notice must include information about how to request a hearing and the resident's right to use legal counsel or other spokesman at

the hearing. Therefore, the following agencies must be included in a letter of transfer or discharge:

Department of Medical Assistance Services
Division of Client Appeal
600 East Broad Street
Suite 1300
Richmond, Virginia 23219
804-367-8488

Center for Quality Health Care Services and Consumer Protection
Office of Health Facilities Regulation
3600 W. Broad Street
Suite 216
Richmond, Virginia 23230
800-955-1819

Department for Rights of Virginians with Disabilities
202 North 9th Street
9th Floor
Richmond, Virginia 23219 800-533-3962

In addition to requesting a hearing, a complaint may be filed. The Ombudsman Program information must be included in case the resident and/or the family member, guardian, or legal representative wants to discuss the matter with an Ombudsman to determine if a complaint is warranted:

Northern Virginia Long-Term Care Ombudsman Program
12011 Government Center Parkway
Suite 708
Fairfax, Virginia 22035-1104
703-324-5861

- 4) The law requires that a nursing facility inform the resident and the resident's family member, guardian, or legal representative about a transfer or discharge at least thirty days in advance.

Some of the letters we received have listed the Ombudsman Program as the agency with whom the resident/family appeals a discharge notice. **The Ombudsman Program DOES NOT operate the appeals process referred to in OBRA (Omnibus Budget Reconciliation Act of 1987) nor does the Program have the statutory authority to execute an appeals process.** Persons contacting the Northern Virginia Long-Term Care Ombudsman Program regarding a transfer or discharge notice would receive complaint counseling to assist them with self-advocacy. If further intervention were necessary, the Ombudsman Program would attempt to address the concern through mediation or complaint investigation. These methods of intervention, while hopefully successful in achieving a resolution, are not a substitute for the formal appeals process.

New

The Northern Virginia Long-Term Care Ombudsman Program has a new intake line!!!

703-324-5861

Just leave a message on the intake line and a staff member will return your call as soon as possible.

Volunteer Ombudsmen Receive High Praise!

Fifty-one volunteers were honored at a special gathering held at Fairfax County's Green Spring Gardens Park in May. Commission on Aging members from the City of Alexandria and the Counties of Arlington and Fairfax, as well as the Policy Board of the Northern Virginia Long-Term Care Ombudsman Program, attended to add their applause for the volunteers' dedicated advocacy service.

The highlight of the event was Program Director Rita Schumacher's reading of the quotations describing each volunteer. Residents and staff of the area's nursing homes and assisted living facilities had been invited to submit comments about the impact of each volunteer's efforts in their facility. The personalized quotes were framed and presented to each ombudsman. Here's a sampling of what facility residents had to say:


"John looks into everything I ask him to, he checks it out and comes back later to let me know what's happening. He's good at that. You don't find that every day. He's nice! I smile every time I see him."

"Darlene is always friendly and she keeps her word."

Here are comments from the administrators and other facility staff:

"Bob works to create a positive environment for our residents to live and our employees to work."

"Gail never brings a problem to me without bringing possible solutions. He always has a desire for a win-win conclusion."



The Ombudsman Program suffered a great loss when Joseph G. May died on June 22, 2000. He was a Volunteer Ombudsman for over eight years, serving the residents at Iliff Nursing and Rehabilitation Center. Iliff recognized Joe as ‘Volunteer of the Year’ in 1996. A warm, friendly, and thoughtful person, Joe was clearly committed to the cause of residents’ rights and improved nursing facility conditions. Joe’s advocacy work extended to writing letters to legislators regarding issues of concern to long-term care residents. All of us who knew Joseph May will truly miss him.

Northern Virginia
Long-Term Care
Ombudsman Program
12011 Government Center Parkway Suite 708
Fairfax, Virginia 22035-1104